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May 14, 2019

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141**

Dear Ms. Dortch:

Pursuant to the *Protective Order*<sup>1</sup> in the above-referenced proceeding, Puerto Rico Telephone Company, Inc. d/b/a Claro ("PRTC") submits a redacted version of the notice of *ex parte* filed as part of the above-referenced proceeding.

PRTC has designated, and received written approval to designate, as Highly Confidential the marked portions of the attached notice of *ex parte*. The Highly Confidential information appears after the headings *[[begin highly confidential information]]* and before the headings *[[end highly confidential information]]*. Please contact the undersigned with any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "Eduardo R. Guzman", written over a horizontal line.

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<sup>1</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, Protective Order (WCB rel. June 1, 2018).*



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Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. d/b/a Claro (“PRTC”) hereby responds to the ex parte letter filed by the Puerto Rico Telecommunications Bureau (“Puerto Rico Bureau” or “Bureau”) on February 12, 2019, in the above-referenced proceeding (“Puerto Rico Bureau Ex Parte”). Reference is made to the ex parte letter that PRTC filed on April 26, 2019 (“PRTC April Ex Parte”).<sup>1</sup>

**I. The Puerto Rico Bureau’s Arguments Regarding the Scope of Competition in Puerto Rico**

The Puerto Rico Bureau asserts that the Commission’s analysis in this proceeding “must necessarily include a municipio level of granularity.”<sup>2</sup> The Bureau also claims that “competition in Puerto Rico has been primarily focused on larger municipal areas, including but not limited to the San Juan metropolitan area” and that “[t]here are many areas in Puerto Rico that have not yet experienced robust competition.”<sup>3</sup>

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<sup>1</sup> Letter from Eduardo R. Guzmán, Counsel for Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Apr. 26, 2019).

<sup>2</sup> Puerto Rico Bureau Ex Parte at 1.

<sup>3</sup> *Id.*

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As a threshold matter, PRTC notes that the Puerto Rico Bureau Ex Parte marks the second time that the Puerto Rico Bureau has made representations about the state of competition in Puerto Rico in the instant proceeding without providing or citing to any data to support for its claims. This, despite the fact that the Bureau indicated more than six months ago that it “has at its disposal confidential market information that may be helpful.”<sup>4</sup> While PRTC has not had access to the “confidential market information” to which the Bureau alludes, aggregate data that the Bureau makes available (when combined with the Commission’s data and internal PRTC data) undermine the Bureau’s arguments regarding the state of competition in Puerto Rico.<sup>5</sup> PRTC will respond when and if the Bureau provides data to support its allegations regarding the state of competition in Puerto Rico.

There also are several defects inherent in the Bureau’s assertions. First, the notion that the Commission in this proceeding “must necessarily” conduct a granular geographic market analysis clashes with (1) judicial precedent establishing that the Commission is not bound to a particular analytical framework when considering forbearance and (2) Commission precedent confirming that it has discretion to determine the analytical framework that it will apply to forbearance petitions.<sup>6</sup> The Bureau does not cite to a single authority that overrules or contradicts these precedents.

Second, the Commission’s data and past determinations undermine the Bureau’s substantive claims. As PRTC has noted, two years ago the Commission found—after conducting a granular analysis of market conditions in Puerto Rico—that there was competition in *every* municipality in Puerto Rico for transport service and channel terminations above DS-1 capacity.<sup>7</sup> And as noted in the PRTC April Ex Parte, the Commission’s data show the following when it comes to competition at the census block level in Puerto Rico, which is an even more granular look than what the Bureau has proposed:

- More than 75 percent of the census blocks in Puerto Rico (containing more than 80 percent of the island’s locations) are served by at least two wireline broadband providers at speeds of at least 10 Mbps/1 Mbps;

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<sup>4</sup> Reply Comments Submitted on Behalf of the Telecommunications Regulatory Board of Puerto Rico at 3, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed Sept. 5, 2018).

<sup>5</sup> See PRTC April Ex Parte at 4-12.

<sup>6</sup> See, e.g., *Earthlink v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8633 (2010); see also *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17142 (2003) (applying nationwide analysis to impairment under section 251); see also *Petition for Forbearance of USTelecom – The Broadband Association at 19-23, Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

<sup>7</sup> See *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459 (2017).

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- 77 percent of the census blocks in Puerto Rico are served by non-ILEC options (either Liberty Cablevision of Puerto Rico, LLC and/or fixed wireless providers);<sup>8</sup>
- 89.10 percent of the island’s population is served by at least one wireline broadband provider at speeds of 25 Mbps/3 Mbps and at least one mobile LTE provider at speeds of 5 Mbps/1 Mbps up.<sup>9</sup>

These data point to the existence of competition well beyond the San Juan and the “larger municipal areas.”

Finally, even if, *arguendo*, the Puerto Rico Bureau’s allegations about the state of competition outside of San Juan and other large municipalities were accurate—which they are not—they would not support extending the application of the obligation under section 251(c) of the Communications Act to lease unbundled network elements (“UNEs”) and offer retail telecommunications services for resale at a wholesale discount (hereinafter the “UNE and Resale Obligation”). If, as the Bureau suggests, there is no UNE-based competition today in some small and/or rural areas in Puerto Rico (more than twenty years after the enactment of the Telecommunications Act of 1996), it would be reasonable to assume that the existence of the UNE and Resale Obligation has done little to promote UNE-based competition in those areas. It also would suggest that any impediment to competition in those areas lies not on the availability of UNEs, but on other factors (such as low population density) that have *nothing* to do with the UNE and Resale Obligation. Under these circumstances, the continued extension of the UNE and Resale Obligation is highly unlikely to contribute to the deployment of true facilities-based fixed landline (much less wireless networks) in those areas. Data and empirical evidence support this conclusion: providers that do *not* rely on the UNE and Resale Obligation are driving competition in Puerto Rico beyond the San Juan metropolitan area.<sup>10</sup> The notion that eliminating a regime that has not contributed—and today is not contributing—to competition in remote areas in Puerto Rico is somehow going to “hamper competitive activity” in the future is an arbitrary conclusion.

## II. The Puerto Rico Bureau’s Arguments Regarding Liberty Cablevision’s Opposition to the Petition

The Puerto Rico Bureau Ex Parte also points to the fact that Liberty Cablevision—the island-wide incumbent cable company in Puerto Rico—is supporting the denial of the Petition to argue that this shows that there is “considerable value for the marketplace as a whole to require

<sup>8</sup> See Federal Communications Commission, Form 477 Broadband Deployment Data (June 2017); *see also* FCC Releases Form 477 Data on Broadband Deployment as of June 30, 2017, *Public Notice*, 33 FCC Rcd 8590 (Sept. 10, 2018).

<sup>9</sup> See Federal Communications Commission, Form 477 Broadband Deployment Data (June 2017); FCC Releases Form 477 Data on Broadband Deployment as of June 30, 2017, *Public Notice*, 33 FCC Rcd 8590 (Sept. 10, 2018); Federal Communication Commission, LTE Coverage by Number of Providers YE 2017 (Dec. 20, 2018); *see also* PRTC April Ex Parte at 6.

<sup>10</sup> See PRTC April Ex Parte at 4-12.

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PRTC to continue to offer UNE/TELRIC services.”<sup>11</sup> It is not hard to envision reasons why PRTC’s largest competitor would support the extension of an asymmetrical regulatory regime that compels PRTC—and only PRTC—to continue to offer to its competitors portions of its network at subsidized rates. Moreover, the Bureau’s comments may have been based on an incomplete record: when the Puerto Rico Bureau Ex Parte was filed, it appears that the Bureau had not been privy to PRTC’s internal data showing that (1) Liberty Cablevision has become a key competitor in Puerto Rico *[[begin highly confidential information]]* *[[end highly confidential information]]* and (2) UNE usage overall has collapsed in Puerto Rico to the point where *[[begin highly confidential information]]*

*[[end highly confidential information]]* and PRTC is leasing fewer than *[[begin highly confidential information]]* *[[end highly confidential information]]* UNE loops in a market that has over 3.5 million voice subscriptions and more than 700,000 wireline subscriptions. Whether the Bureau considered these facts or not, they dispel the notion that Liberty Cablevision’s opposition to the Petition demonstrates “considerable value for the marketplace” in maintaining the UNE and Resale Obligation.

### **III. The Puerto Rico Bureau’s Arguments Regarding the Role of the UNE and Resale Obligation in Restoration of Service**

Finally, the Puerto Rico Bureau’s suggestion that the UNE and Resale Obligation, including specifically the use of “TELRIC rates,” is vital to the restoration of infrastructure after weather events finds no support in the record or in the recent experience in Puerto Rico after the impact of Hurricanes Irma and María.<sup>12</sup> As the Commission knows, these hurricanes destroyed much of the outside plant facilities of PRTC and non-ILEC providers alike, and in their aftermath the priority for all facilities-based providers was to repair and restore their networks as soon as possible. The UNE and Resale Obligation, which is supposed to promote competition by allowing providers to enter the market without having to build dedicated transport and last mile facilities, was largely irrelevant to the post-hurricane restoration efforts.

That should come as no surprise: whether an ILEC is compelled to offer a circuit-based dedicated transport facility or DS-1 UNE loop at TELRIC rates is inconsequential when the ILEC’s copper facilities are inoperable after a storm and have not been restored. And while PRTC agrees with the Bureau that after a natural disaster collaboration between providers is paramount, the notion that this collaboration necessitates “TELRIC rates” is groundless. To the contrary, the experience in Puerto Rico shows that the most significant and impactful collaborative restoration efforts took place in the form of intra-island roaming agreements, joint efforts to repair towers and other shared infrastructure, and the deployment of fiber-based and fixed wireless solutions—none of which is subject to TELRIC rates.

<sup>11</sup> Puerto Rico Bureau Ex Parte at 2.

<sup>12</sup> See, e.g., Letter from Eduardo R. Guzmán, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (Nov. 9, 2018); Reply Comments of Puerto Rico Telephone Company, Inc., *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (Sept. 5, 2018).

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For the reasons set forth above, in the Petition, and in the PRTC Reply Comments, the Petition should be granted and Puerto Rico should not be excluded from said grant of forbearance.

Respectfully submitted,



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